

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 26,
2001 at 9:08 A.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: Sen. Ric Holden (R)

Members Absent: None

Staff Present: Valencia Lane, Legislative Branch
Cecile Tropila, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 29, SB 109, SB 283
Executive Action: HB 29

*{Tape : 1; Side : A; Comments: Did not record on first side due
to bad flat mic.}*

HEARING ON HB 29

Sponsor: REP. MARK NOENNIG, HD 9, BILLINGS

Proponents: None

Opponents: None

Opening Statement by Sponsor:

REP. MARK NOENNIG, HD 9, BILLINGS, summarized section 70-25-205 still remains and needs to be taken out because it is a conflicting provision. He stated that this should not relieve the landlord from paying damages and that the landlord could pay to a mailing address. He pointed out that this bill should be made clear to appear that it is not wrongful for a landlord to withhold security deposits of a tenant in order to pay for any damages that occur to the property.

Proponents' Testimony: None

Opponents' Testimony: None

Questions from Committee Members and Responses:

CHAIRMAN LORENTS GROSFIELD asked if this bill was amended in the House Judiciary Committee. **REP. NOENNIG** answered yes, it was.

CHAIRMAN GROSFIELD asked if it contained the repeating language in it. **REP. NOENNIG** answered yes.

CHAIRMAN GROSFIELD asked if this bill was discussed thoroughly in committee. **REP. NOENNIG** answered the intent of changing the language of the section was not changed and they need to stay within the purpose of the bill.

Closing by Sponsor:

REP. MARK NOENNIG, HD 9, BILLINGS, closed by stating this bill passed in the house 100 to nothing.

HEARING ON SB 109

Sponsor: SEN. JERRY O'NEIL, SD 42, KALISPELL

Proponents: James Turner, HALT INC.
Robert Emmons, Attorney Great Falls

Opponents: Jacqueline Lenmark, State Bar of Montana
Molly Shepherd, President of Montana State Bar
Greg Murphy, Attorney & Bar Examiner Billings
John Sullivan, Attorney Helena
Chris Tweeten, Chief Counsel for Attorney General
Christal Ness, Paralegal Montana State Bar Assoc.
Don Judge, AFL-CIO

**Scott Crichton, Exec. Director American Civil
Liberties Union**

Opening Statement by Sponsor:

SEN. JERRY O'NEIL, SD 42, KALISPELL, handed in his testimony **EXHIBIT(jus21a01)**. He handed out two letters with attached information regarding to SB 109 **EXHIBIT(jus21a02)**.

{Tape 1; Side B}

Proponents' Testimony:

James Turner, HALT INC., handed in his testimony **EXHIBIT(jus21a03)**. He handed out an information packet on Halt, Inc. **EXHIBIT(jus21a04)**

Robert Emmons, Attorney, Great Falls, stated there should be procedural rules for the discipline of attorneys. He pointed out that rule 13(a) was adopted in 1983 and had been changed regarding the formal complaint that was filed under the attorney that is being investigated. These issues had never been raised due to the timing of the adoption of rules and there was never an attorney who had questioned these rules on civil procedure, due process and equal protection of the law. He said that this issue was brought in front of the Montana Supreme Court and the supreme court thinks there is due process and there is a vote of a four to three split. He stated the Supreme Court changed the ruling that once the formal complaint is filed than the attorney is allowed to receive the material that the commission has. He wants the Montana State Bar to look at these rules that have been changed and try to reestablish these issues on how attorneys are able to provide good business and litigation. He felt the lawyers are in bad shape in Montana due to the way this is litigating and the way the process is going and this becomes a legislative process instead of a judicial function.

Opponents' Testimony:

Jacqueline Lenmark, State Bar of Montana, handed out information and testimony regarding the opposition of this bill by the Montana State Bar **EXHIBIT(jus21a05)**.

Molly Shepherd, President Montana State Bar, said this bill is full of troubles and has the State Bar of Montana taking a good hard look at what courts and lawyers do in the state of Montana. She said the State Bar has reexamined its respective rules in the judicial system and they have to maintain the constitution to regulate the practice of law. He said that the responsibilities

of the Montana State Bar are to go beyond representation of the clients and they are accountable for the health and liability of the courts. The Montana Supreme Court recognized the role of attorneys when it created the State Bar in 1974 and when it made membership within the bar a condition of practicing law in Montana. She pointed out the role of attorneys that were set forth by the Montana Supreme Court to assure that the responsibilities of the legal profession to the public are more effectively discharged.

Greg Murphy, Attorney & Bar Examiner, Billings, said the concept of the admission to the Montana State Bar speaks of the judicial control of the organization. He stated the function of the practice of law and that this profession has always asked for high qualifications before people are able to advise and represent the public. He pointed out the two important functions of the practice of law one being bar admissions and the other is bar discipline. All the other functions are held by the Montana State Bar Association and he said that the court is the exclusive authority that appoints the members of the Montana State Board of Bar Examiners. He said the courts have always regulated the practice of law because they are in the best position to preserve the law and qualifications of attorneys and they should be the ones to regulate within the state of Montana.

John Sullivan, Attorney, Helena, said the judicial system is not a closed system of government and it is composed of a large number of committees and commissions. He pointed out these committees and commissions have non-lawyer public members and almost all of them are open to the public. He stated that government power is divided among co-equal branches and no one branch has all the power and this bill would dismantle what is in place for the state of Montana and in the federal system.

Chris Tweeten, Chief Counsel for Montana Attorney General, said this bill is changing the status quo and this bill would cause problems. He pointed out the current system allows the Montana Supreme Court flexibility to address problems and procedures within the courts.

Christal Ness, Paralegal Montana State Bar Assoc., handed in a testimony **EXHIBIT(jus21a06)**.

{Tape 2 Side A}

Don Judge, AFL-CIO, felt there was already a good system within the state of Montana and if SB 109 were to pass it would cause problems for the legal foundation that the constitution has set forth.

Scott Crichton, Exec. Director, American Civil Liberties Union, said he is in opposition of this bill.

Questions from Committee Members and Responses:

SEN. DUANE GRIMES asked if the effect of this type legislation is in other states and what are the statistics. **James Turner, HALT Inc.,** answered Montana would be the first to be affected.

SEN. GRIMES asked if no states currently do this procedure was Montana the only state that did have a legislature functioning in this capacity prior to 1972. **James Turner** said he could not answer that question. He believed it was another reform effort to strengthen regulation of attorneys.

SEN. MIKE HALLIGAN asked what is different about other professions due to access of education. He also asked if there is a public protection that is different in other professions.

SEN. O'NEIL answered he didn't believe there was much difference between other professions.

SEN. AL BISHOP asked if instead of separating the branches how would it equate the relationship of lawyers and the legislature.

SEN. O'NEIL answered the legislature did have the power to regulate judgement and the relationship will still be available.

SEN. AL BISHOP asked how the supreme court could not represent the people. **SEN. O'NEIL** answered yes, the supreme court is supported by the people, but the people are not allowed to vote for candidates of the court due to accreditation. He said he does not see the judiciary offering that service.

CHAIRMAN GROSFIELD asked if the legislature has ever done a procedure and if there are any instances these bills have been brought forward. **Molly Shepherd** answered she was not aware of it. **Greg Murphy** remarked it would be the option of the legislators. **Jacqueline Lenmark** recalled two instances when this committee observed rules of procedure.

CHAIRMAN GROSFIELD asked if the rules and procedures should be changed. **SEN. O'NEIL** answered he would like to offer more justice to the people.

Closing by Sponsor:

SEN. JERRY O'NEIL, SD 42, KALISPELL, summarized his opening testimony and added this bill encourages the court to work with the legislature and that the judicial system is not an open

system of government and it should be. He argued the problems are within the system and this system is not working for the public.

{Tape 2; Side B}

HEARING ON SB 283

Sponsor: SEN. MIGNON WATERMAN, SD 26, HELENA

Proponents: Sherri Medar, Coordinator for Assessment Program
Karen Sedlock, Program Supervisor of CRB
Maggie O'Brien, Citizen Review Board Missoula

Opponents: Chuck Hunter, Dept. Health & Human Services
Connie Murphy, Executive Director of Social
Workers

Opening Statement by Sponsor:

SEN. MIGNON WATERMAN, SD 26, HELENA, handed out a revised fiscal note **EXHIBIT(jus21a07)**. She handed out amendments for SB 283 **EXHIBIT(jus21a08)**. She began by stating this bill was a review of foster care systems and the state offers semi-annual reviews of each child within foster care homes to insure that appropriate placement is made and that they are receiving services. She pointed out in 1993 the legislature created pilot programs for Citizen Review Boards (CRB) and children would then move through the foster care system faster and better services if there was an independent review of their cases.

She explained the amendments create a common system of confidentiality, review procedures, eliminates the pilot for CRB and allows each judicial district in the state to determine if they would like to operate with foster care review committees or to establish CRB. By reviewing the documents it is determined how serious the case is for the children, the background and the issues raised in the case. She pointed out there is a \$100 difference in the costs between these two programs, by the number of children reviewed and the number of days they are placement, which vary dramatically.

Proponents' Testimony:

Sherri Medar, Coordinator for Assessment Program, handed out a list of advisory committee members **EXHIBIT(jus21a09)**. She said this committee was to establish improvement of the court system for children and families of neglect and abuse cases. She expressed that the foster care review process has been an issue of the court assessment program for many years and they would

like to keep the review process as consistent as possible. She would like to see CRB kept where fiscally possible and where judges could seek their input.

{Tape 3; Side A}

Karen Sedlock, Program Supervisor of CRB, handed out an informational packet **EXHIBIT(jus21a10)**. She handed letters of testimony **EXHIBIT(jus21a11)**. She said the review boards provide opportunities for the safety and the health of the child. She added review boards need to be strong because they capture information about individual children that is not available through any other system. She explained the informational packet includes volunteers, data from seven counties and summarizes the work of the pilot program dealing with critical issues impacting children in foster care.

Maggie O'Brien, Citizen Review Board, Missoula, said this bill offers training for volunteers, which is extremely needed and this bill should move from a pilot program into a permanent program. She pointed out that having this bill move to the judicial department is good for judges who make the decisions on these boards. She expressed the open deliberation process dealing with the care of a child and feels this should be kept confidential. The needs of the child and sensitivity of a child is very important and there should be closed deliberations for communication of board dealing with the child.

{Tape 3; Side B}

Opponents' Testimony:

Chuck Hunter, Dept. Health & Human Services, handed out data regarding fiscal year 2000 **EXHIBIT(jus21a12)**. He handed out charts **EXHIBIT(jus21a13)**. He explained the background of the foster care system and mentioned the primary benefits that are expressed in pilot programs are not adequate with offering services to families through review boards. Through the findings of CRB and the pilot programs there was no significant outcome for children and families, foster care review committees had more team approaches and the CRB was more independent from the department and they also found a high percentage of the department's proposed plan. He feels that there should be one single system in the state rather than two offering better services and working one-on-one with the foster care system.

Connie Murphy, Executive Director of Social Workers, said this bill tries to promote adversarial outcomes. She pointed out that CRB's began as pilot programs and there are no funds to move

these programs forward to provide a better system for children. She mentioned that CRB's are not user-friendly they point out the department and social worker on a case are not correct with information for foster care.

Questions from Committee Members and Responses:

SEN. O'NEIL asked if a Citizen Review Board would be independent and act in a neutral manner. **REP. WATERMAN** answered that CRBs' are independent and are under the court assessment program.

SEN. O'NEIL asked if this would be a good forum for the families to go to. **REP. WATERMAN** answered that the placement of a child to return to the home falls within the preview of these committees.

{Tape 4; Side A}

SEN. GRIMES asked if foster care parents were a part of this issue. **REP. WATERMAN** answered yes, they did have a representative on the committee.

SEN. GRIMES asked when these reviews are done are they looking at placements. **REP. WATERMAN** answered yes and added that they are looking at placements and how to move the child through the placements to a permanent home.

SEN. GRIMES asked if the child was in a home and there was a problem would the CRB discuss the particulars of that situation. **REP. WATERMAN** answered that CRB would be aware of the situation, but they may not be making a determination of the child.

SEN. GRIMES asked if there would be more ownership for foster parents and if the situation be made public. **REP. WATERMAN** answered if there are inappropriate situations going on in a foster home that is harming the child than it should become public. The foster parents do feel they have ownership with the child to an extent.

SEN. GRIMES asked if numbers of reviews are being added to get done. **REP. WATERMAN** answered yes, they currently do these every six months.

SEN. GRIMES asked if this is a two tier system vs. the desire of the options. **REP. WATERMAN** answered one system would be appropriate and they cannot move to CRB without accruing additional costs.

Closing by Sponsor:

SEN. MIGNON WATERMAN, SD 26, HELENA, summarized she would like to see one system and would like to see it cost no additional fees. She said that by returning to the foster care review committee the judges in the state would become upset and there should be a compromise with this bill. She believed the privacy issue was a constitutional issue and this bill is the best route to go. CRBs' cost more money and may add more work, but committees in this state believe them to be good and this ought to be a part of our state.

EXECUTIVE ACTION ON HB 29

Motion: SEN. MCNUTT moved that HB 29 BE CONCURRED IN.

Discussion: None

Vote: Motion carried unanimously.

ADJOURNMENT

Adjournment: 12:10 P.M.

SEN. LORENTS GROSFIELD, Chairman

CECILE TROPILA, Secretary

LG/CT

EXHIBIT (jus21aad)